

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

| | | |
|---|---|--------------|
| RODNEY A. BALLARD, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| ATTORNEY GENERAL JON BRUNING, |) | |
| individually and in his official capacity, |) | 4:07CV3122 |
| GOVERNOR DAVID HEINEMAN, |) | |
| individually and in his official capacity, and |) | ORDER |
| TROOPER No. 371, individually and in his |) | |
| official capacity, |) | |
| |) | |
| Defendants. |) | |

This matter is before the court on the motion [40] of defendants Bruning, Heineman, and Trooper No. 371, in their individual and official capacities, to stay the progression of this case pending the district court's ruling on their Motion to Dismiss [42]. As a ground for dismissal, the movants contend they have sovereign and eleventh amendment immunity with respect to the plaintiff's "official capacity" claims.

Unless the complaint states a claim of violation of clearly established law, a defendant pleading qualified immunity is entitled to dismissal before the commencement of discovery. *See Mitchell v. Forsyth*, 472 U.S. 511 (1985). Upon review of the file, I find that the motion should be granted, without prejudice to plaintiff filing, if necessary, a motion for leave to conduct limited discovery on the issue of qualified immunity.

A Rule 26(f) reporting deadline will be entered, if necessary, by further order after the Motion to Dismiss is decided.

IT IS SO ORDERED.

DATED July 23, 2007.

BY THE COURT:

s/ F.A. Gossett
United States Magistrate Judge